August 12, 1996

Professor Gerald Kato
Society of Professional Journalists
Student Chapter
University of Hawaii at Manoa
Crawford Hall 208
2550 Campus Road
Honolulu, Hawaii 96813

Dear Mr. Kato:

Re: Access to Timesheets of Deputy Attorneys General

This is in reply to a letter from Jahan Byrne, to the Office of Information Practices ("OIP") requesting an advisory opinion concerning whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), timesheets prepared by deputy attorneys general in connection with a complaint your organization made to the Attorney General under part I of chapter 92, Hawaii Revised Statutes, must be made available for inspection and copying. Mr. Byrne is the former President of the Society of Professional Journalists, University of Hawaii Chapter at Manoa ("SPJ").

ISSUE PRESENTED

Whether, under the UIPA, timesheets prepared by State deputy attorneys general in connection with a complaint filed with the Department of the Attorney General ("Department") by the SPJ alleging possible violations of the State's open meetings law by the University of Hawaii Board of Regents ("University") must be made available for public inspection and copying after information describing the nature of legal work performed by the deputies has been segregated from the timesheets.

BRIEF ANSWER

Yes. Only two of the UIPA's exceptions to required agency disclosure of government records in section 92F-13, Hawaii

Revised Statutes, would arguably permit the Department to withhold access to copies of the timesheets after information describing the nature of legal services or activities performed has been segregated from the timesheets.

Under sections 92F-13(3) and (4), Hawaii Revised Statutes, an agency is not required to make available for inspection and copying government records covered by the attorney-client privilege or attorney work-product doctrine. While several legal authorities have found that records, such as billing sheets and time tickets and timeslips that reveal the nature of the documents prepared, issues researched, or matters discussed could reveal the substance of confidential discussions between attorney and client, courts and other authorities have found that itemized billing statements that do not contain detailed entries that advise, analyze or discuss privileged communications, or that describe the attorney's services only in general terms, are not protected by the attorney-client privilege or the attorney work-product doctrine.

Additionally, under the UIPA, an agency is not required to disclose "[r]ecords or information compiled for law enforcement purposes" that "must remain confidential in order to avoid the frustration of a legitimate government function." Haw. Rev. Stat. § 92F-13(3) (Supp. 1992); S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess., Haw. S.J. 1093, 1095 (1988). Even assuming that the timesheets have been compiled for law enforcement rather than administrative purposes, in applying Exemption 7 of the federal Freedom of Information Act for guidance, as we have in previous opinion letters, we do not believe that disclosure of the timesheets involved in this case would frustrate a law enforcement function. Under the facts presented in this case, the statute of limitations has run on an action under section 92-11, Hawaii Revised Statutes, and the Department has indicated that a law enforcement proceeding in response to the SPJ's complaint is neither pending nor prospective.

For these reasons, and because none of the other exceptions in section 92F-13, Hawaii Revised Statutes, would permit the Department to withhold access to the timesheets in this case, it is our opinion that after the segregation of the activity groups and codes, these government records must be made available for inspection and copying "upon request by any person." Haw. Rev. Stat. § 92F-11(b) (Supp. 1992).

FACTS

By letter dated October 29, 1993 to former Attorney General

Robert A. Marks, the SPJ alleged that the University of Hawaii ("University") committed possible violations of the State's open meetings law, part I of chapter 92, Hawaii Revised Statutes, in connection with its selection of a new University President.

In a telephone conversation with Deputy Attorney General Charleen M. Aina on February 12, 1993, among other things, Mr. Byrne requested to receive a copy of timesheets she prepared for work associated with the SPJ's open meetings law complaint. By letter to Jahan Byrne dated March 12, 1993, Deputy Attorney General Charleen M. Aina provided the SPJ with the Department's instructions concerning the preparation of timesheets by deputy attorneys general. However, the Department denied Mr. Byrne's request for copies of Ms. Aina's timesheets stating:

> I realize that your facsimile today may have been prompted in part by my not having yet followed up with a copy of our timekeeping instructions which you requested when we last talked on February 12, and I apologize for being sidetracked. A copy of the material is enclosed. Soon after we spoke, I did consult with the Attorney General about the possibility of your receiving copies of my timesheets since your complaints were received, and as I anticipated when we spoke on the 12th, we believe that they are not subject to disclosure under Haw. Rev. Stat. ch. 92F.
>
> As we have explained on various occasions over the years, while this office welcomes and needs the public's assistance to properly enforce the Sunshine Law, Haw. Rev. Stat. ch. 92, as a matter of sound law enforcement policy and practice, we do not ordinarily disclose the status or progress of our law enforcement investigations to members of the public. Consistent with this, unless the person who brings a situation to our attention serves as a witness to secure an indictment, the public, including persons who bring situations to our attention, learns about these situations only after an indictment is obtained and judicial proceedings are initiated. Thus, as I believe I explained specifically during a telephone conversation with you soon after receiving your October 29, and November 2,

> 1993 letters, we will not tell you how your complaints are, will or have been handled.

Letter from Charleen M. Aina to Jahan Byrne (March 12, 1993).

Chapter XI of the Legal Services Procedure Manual, Department of the Attorney General, State of Hawaii (Aug. 1, 1992) ("Legal Services Procedure Manual"), requires all deputy attorneys general to complete timesheets for each working day, concerning the nature and time spent working on legal matters. A copy of the Department's timesheet form is attached as Exhibit "A."

In Column No. 1 of the timesheet form each deputy is required to enter either the "AG#" or keyword, which is generated by the Department's case information system. Column No. 2 of the timesheet form requires each deputy to enter an "activity group" code that corresponds to the type of work being performed, for example, "L" for litigation, "A" for advice and counsel, "B" for legislation, "M" for miscellaneous, and "F" for firm.

In Column No. 3 of the timesheet form, deputy attorneys general are required to enter "activity codes" that more clearly identify the specific activity being performed by the deputy, for example, "A DP" for appearance at deposition, "A LH" for appearance at legislative hearing, and "M C" for meeting with client. A copy of the "activity group" codes and "activity codes" is attached as Exhibit "B." Column No. 4 of the Department's timesheet form contains space for the entry of the time spent by the deputy performing the task rounded to the nearest tenth of an hour, while Column No. 5 allows for the entry of additional information or notes or descriptive information.

Data entered on the Department's timesheets by each deputy attorney general is placed in the Department's computerized Rapid Information Retrieval System ("RIRS") which resides in the Department's Wang VS minicomputer. According to section C.1 of chapter XI of the Legal Services Procedure Manual, the failure of a deputy attorney general to enter all work-related time into the RIRS will negatively affect raises that the deputy may be eligible to receive. Specifically, "the percentage salary increase that the deputy is eligible to receive will be reduced by up to 1% for every five days of unentered time."

Once timekeeping information has been entered into the RIRS by Department personnel, the paper timesheet forms are returned to each deputy, who may either keep or discard them, unless they are related to a matter in which the Department expects to make a request for an award of attorneys fees or seek sanctions under

Rule 11 of the Hawaii Rules of Civil Procedure.

The Department informed the OIP that after reviewing the SPJ's complaint, a determination was made, for whatever reason, not to take official action upon the complaint.[1] Thus, the Department has closed its file in this matter and, indeed, under section 92-11, Hawaii Revised Statutes, the statute of limitations has run upon any suit to void any final action of the University upon proof of a willful violation.

On August 29, 1993 Mr. Byrne clarified, in a telephone conversation, that the SPJ is seeking copies of timesheets prepared by deputy attorneys general in responding to the SPJ's open meetings law complaint against the UH, after information identifying the activity groups and activity codes have been segregated, or removed, from the timesheets. In other words, the SPJ is specifically interested in how much time was spent by deputy attorneys general in response to its complaint; it is not interested, at this time, in ascertaining the specific activities in which the deputies were engaged.

In a memorandum dated September 30, 1993, Deputy Attorney General Charleen M. Aina provided the OIP with copies of timesheets that, to the best of her recollection, record the time she spent engaged in activities relating to meetings by the University of Hawaii to select a new president.

DISCUSSION

I. INTRODUCTION

The UIPA requires each agency, upon request by any person, to make government records available for inspection and copying during regular business hours, Haw. Rev. Stat. § 92F-11(b) (Supp. 1992), unless exempted by section 92F-13, Hawaii Revised Statutes. Under the UIPA, the term "government record," means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1992).

At the outset, it is useful to set forth a few principles that guide our resolution of the issue raised by this opinion request. Our construction of the UIPA must be guided by the policy favoring disclosure and its exceptions to required agency

[1]Under section 92-12(a), the attorney general and the prosecuting attorney are authorized to enforce the open meetings law.

disclosure must be narrowly construed. See OIP Op. Ltr. No. 93-10 at 2, n.1 (Sept. 2, 1993).[2] This rule of construction, however, is not determinative. Indeed, although the UIPA was intended as a general matter to promote openness in government, see section 92F-2, Hawaii Revised Statutes, the UIPA also recognizes competing interests, and the need for some governmental records to remain confidential. See Haw. Rev. Stat. §§ 92F-2, 92F-13, and 92F-14 (Supp. 1992) and (Comp. 1993).

With these principles in mind, we turn to an examination of whether, under any of the exceptions in section 92F-13, Hawaii Revised Statutes, timesheets or timekeeping information maintained by the Department in response to the SPJ's open meetings law complaint may be withheld from inspection and copying.[3] Only two exceptions in section 92F-13, Hawaii Revised Statutes, would arguably permit the Department to withhold access to the timesheets involved in the facts of this case.

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[2]As the United States Supreme Court has noted, the purposes of freedom of information laws are to facilitate public access to government information and "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." John Doe Agency v. John Doe Corp., 493 U.S. 146, 151 (1989). Consistent with these purposes, the strong presumption in favor of disclosure places the burden on the agency to justify the withholding of any requested documents. Id.; see also Haw. Rev. Stat. §§ 92F-11(b) and 92F-15(b) (Supp. 1992).

[3]Timesheets possessed by deputy attorneys general, or timekeeping information entered into the Department's RIRS constitute "government records" because: (1) this information exists in written, electronic, or other physical form; (2) the information is "maintained" by the Department; and (3) the Department is an "agency" subject to the UIPA. In several OIP opinion letters, we concluded that an agency "maintains" information for purposes of the UIPA, if an agency "holds, possesses, preserves, retains, stores, or administratively controls" the information in question. OIP Op. Ltr. No. 91-5 (Apr. 15, 1991), OIP Op. Ltr. No. 91-25 (Dec. 11, 1991), OIP Op. Ltr. No. 91-29 (Dec. 23, 1991), OIP Op. Ltr. No. 92-11 (Aug. 8, 1992), OIP Op. Ltr. No. 92-15 (Aug. 14, 1992), OIP Op. Ltr. No. 92-17 (Sept. 2, 1992), and OIP Op. Ltr. No. 92-25 (Dec. 22, 1992). Even though timesheets are returned to each deputy attorney general after the information has been entered into the RIRS, we believe that the Department retains administrative control over the timesheets. See OIP Op. Ltr. No. 91-5 at 7 (Apr. 15, 1991) (information is "maintained" if it is possessed or controlled in any way by an agency).

II. FRUSTRATION OF A LEGITIMATE GOVERNMENT FUNCTION

Under section 92F-13(3), Hawaii Revised Statutes, an agency is not required by the UIPA to disclose "[g]overnment records that, by their nature, must be confidential in order to avoid the frustration of a legitimate government function."

We have previously opined that under this exception, and section 92F-13(4), Hawaii Revised Statutes, an agency may withhold access to government records that are within the scope of the attorney-client privilege recognized by Rule 503, Hawaii Rules of Evidence, chapter 626, Hawaii Revised Statutes, or records protected by the attorney work-product doctrine. OIP Op. Ltr. No. 91-23 (Nov. 8, 1991); see also OIP Op. Ltr. No. 93-15 (Sept. 30, 1993) (section 92F-13(4), Hawaii Revised Statutes, applies to information that is privileged under the Hawaii Rules of Evidence).

A. Attorney-Client Privilege

Rule 503(b) of the Hawaii Rules of Evidence provides:

> (b) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative, or (2) between his lawyer and the lawyer's representative, or (3) by him or his representative or his lawyer or a representative of his lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

But for an exception that is inapplicable to the facts present here, our research indicates that the attorney-client privilege generally does not extend to such matters as the identity of the attorney's client or the client's fee arrangements. Edna Selen Epstein and Michael M. Martin, The Attorney-Client Privilege and the Work-Product Doctrine at 21

(2d ed. 1989); In re Grand Jury Subpoenas, 803 F.2d 493 (9th Cir. 1986).

Several authorities have found that documents, such as billing sheets and time tickets, that reveal the nature of the documents prepared, issues researched, or matters discussed could reveal the substance of confidential discussions between attorney and client. See Gonzalez Crespo v. Wella Corp., 774 Supp. 688 (D.C. D. Puerto Rico 1991); Matter of Witnesses Before Sp., 729 F.2d 489, 495 (7th Cir. 1984); U.S. v. Sherman, 627 F.2d 189, 192 (9th Cir. 1980); In re Grand Jury Witness, 695 F.2d 359, 362 (9th Cir. 1982). In contrast, courts and other authorities have found that itemized billing statements that do not contain detailed entries that advise, analyze or discuss privileged communications, or that describe the attorney's services only in general terms, are not protected by the attorney-client privilege. See Tipton v. Barton, 747 S.W.2d 325 (Mo. App. 1988).

Likewise, in Kentucky Attorney General Opinion No. 92-14 (Jan. 30, 1992), the Kentucky Attorney General opined that bills and statements submitted to a city by a law firm were not protected from disclosure under an exception in the Kentucky Open Record Act for materials covered by the attorney-client privilege, when the documents only revealed the general nature of the services provided. The opinion concluded, however, that should the bills and statements disclose substantive legal matters, that information should be separated from the non-exempt materials, and the non-exempt materials released.

The SPJ has asked for copies of the timesheets prepared by deputy attorneys general after information describing the nature of the services or activities has been segregated from the timesheets. Accordingly, we need not decide whether descriptive information in the timesheets would reveal substantive legal matters in other than general terms. Based upon the foregoing authorities, we conclude that timesheets prepared by deputy attorneys general in this case (after descriptive information has been segregated from the timesheets) would not be within the scope of the attorney-client privilege recognized under sections 92F-13(3) and (4), Hawaii Revised Statutes.

B. Attorney Work Product Doctrine

The work product doctrine protects all documents and tangible things prepared in anticipation of litigation or trial. Haw. Rule Civ. Pro. 26(b)(3). The doctrine was designed to prevent "'unwarranted inquiries into the files and mental impressions of an attorney' and recognizes that it is 'essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.'"

Simon v. G.D. Searle & Co., 816 F.2d 397, 402 (8th Cir.) (quoting Hickman v. Taylor, 329 U.S. 495 (1987). The work-product doctrine is broader than the attorney-client privilege. In re Murphy, 560 F.2d 326, 337 (8th Cir. 1977). If the information is not prepared "in anticipation of litigation or trial," it is not subject to work product immunity. Diversified Indus. Inc. v. Meredith, 572 F.2d 596, 603-04 (8th Cir. 1978).

There are two types of protected work product. "Ordinary" work product is subject to production only upon a showing of substantial need and inability to secure the substantial equivalent without undue hardship. In re Chrysler Motors Corp. Overnight Evaluation Program Litg., 860 F.2d 844, 846 (8th Cir. 1988). "Opinion" work product includes documents that contain mental impressions, conclusions or opinions of an attorney and is discoverable only in "rare and extraordinary circumstances." Id. at 846. Opinion work product is virtually immune from discovery. In re Grand Jury Proceedings, 473 F.2d 840, 848 (8th Cir. 1973).

Our research has disclosed only a few court decisions involving the issue whether attorney billing statements are protected by the attorney work-product doctrine. In Colonial Gas Co. v. Aetna Cas. & Sur. Co., 144 F.R.D. 600 (D. Mass. 1992), for example, the court held that documents concerning the billing and payment of fees are not protected from disclosure unless the time records and statements reveal the nature of the services provided, reasoning:

> A number of these documents concern billing and payment of fees neither disclosed or billed to the defendant. Documents regarding the payment of fees, billing and time expended are generally subject to discovery. In re Grand Jury Proceedings, 680 F.2d 1026, 1027 (5th Cir. 1982) (matters involving the payment of fees generally not protected by the attorney-client privilege); see generally, 4 Moore's Federal Practice, para. 26.60[2] & n. 8 (1991) (factual circumstances surrounding the attorney-client relationship are discoverable).

Colonial Gas Co., 144 F.R.D. at 607.

Similarly, in Bierter Co. v. Blomquist, 156 F.R.D. 173 (D. Minn. 1994), the court held that attorney billing statements were materials assembled "in the ordinary course of business . . . or for nonlitigation purposes are not [protected by work product qualified immunity]." Brieter, 156 F.R.D. at 180; accord Rayman

v. American Charter Fed. Sav. & Loan Ass'n, 148 F.R.D. 647, 660 (D. Neb. 1993) (attorney billing statements and timeslips not transmitting legal advice of any kind not subject to the work-product doctrine or attorney-client privilege).

Likewise, in Real v. Continental Group, Inc., 116 F.R.D. 211 (N.D. Cal. 1986), the court found that while the production of detailed itemizations that would reveal the nature of legal services provided would be protected by the work-product doctrine, the court found that "simply the number of hours billed, the parties' fee arrangement, costs and total legal fees paid do not constitute privileged information." Real, 116 F.R.D. at 214.

Based upon the foregoing authorities, and because the SPJ is seeking copies of timesheets after information concerning the nature of the legal services provided has been segregated from the timesheets, the timesheets would not be protected from disclosure by the attorney work-product doctrine.

C. Records or Information Compiled for Law Enforcement Purposes

In Senate Standing Committee Report No. 2580, dated March 31, 1988, the Legislature set forth examples of information that may be withheld by an agency if its disclosure would result in the frustration of a legitimate government function. Among other examples, the Legislature included "[r]ecords or information compiled for law enforcement purposes." Id.

We shall assume for purposes of this opinion that timesheets prepared by deputy attorneys general in response to the SPJ's complaint letter constitute records or information "compiled for law enforcement purposes," even though this information was arguably prepared for the agency's administrative purposes only.[4]

[4]The Department's Legal Services Manual states, "[t]he performance of legal assignments in the most efficient and effective manner is a main goal for the department . . . [i]t is therefore imperative that this department carefully manage time spent on legal matters." The General Office Manual of the Department of the Attorney General at III-7 (Rev. 11/94) states:

> DEPARTMENTAL TIMEKEEPING SYSTEM
>
> The Department's timekeeping system serves a number of related functions. The most important relate to the accountability of the Department's lawyers to their clients and the management of the Department.

In determining whether the disclosure of records or information compiled for law enforcement purposes would result in the frustration of a legitimate government function, in previous opinion letters, we have applied Exemption 7 of the federal Freedom of Information Act, 5 U.S.C. § 552(b)(7) (1988) ("FOIA") for guidance.[5] Exemption 7 of FOIA permits federal agencies to withhold:

> [R]ecords or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority . . . and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation . . . information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions,

[5]Our reliance upon FOIA's Exemption 7 for guidance in construing the UIPA's exception for law enforcement records is consistent with decisions by courts in other states when construing open records law exceptions for law enforcement records. See, e.g., Citizens for Better Care v. Dep't of Public Health, 215 N.W.2d 576 (Mich. 1974); Lodge v. Knowlton, 391 A.2d 893 (N.H. 1978) (in absence of legislative standards, FOIA's Exemption 7 adopted for guidance); see also H.R. Stand. Comm. Rep. No. 342-88, 14th Leg., 1988 Reg. Sess., Haw. H.J. 969, 972 (1988) ("[w]ith regard to law enforcement records, your Committee considered the concerns from the police department and the press, and deleted this from the subparagraph in its entirety, adopting similar language from the federal [FOIA]"). We do not believe the Legislature intended to give categorical protection to all records or information compiled for law enforcement purposes. Had it meant to do so, it could have expressly provided an exemption for law enforcement records in section 92F-13, Hawaii Revised Statutes.

> or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

5 U.S.C. § 552(b)(7) (1988) (emphasis added).

Additionally, in 1986, Congress created an entirely new mechanism for protecting certain especially sensitive law enforcement matters under a new subsection (c) of the FOIA which provides:

> Whenever a request is made which involves access to records described in subsection (b)(7)(A) and --
>
> (A) the investigation or proceeding involves a possible violation of criminal law; and
>
> (B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,
>
> the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

5 U.S.C. § 552(c) (1988) (emphasis added).

When an agency receives a request for records covered by section (c) of FOIA, the agency may notify the requester that there exist no records responsive to the person's FOIA request:

> The (c)(1) exclusion now authorizes federal law enforcement agencies under specified circumstances, to shield the very existence of records of ongoing investigations or proceedings by excluding them entirely from the FOIA's reach. To qualify for such exclusion from the FOIA, the

> records in question must be those which would otherwise be withheld in their entireties under Exemption 7(A). Further, they must relate to an "investigation or proceeding [that] involves a possible violation of criminal law." Hence, any records pertaining to a purely civil law enforcement matter cannot be excluded from the FOIA under this provision . . . .
>
> Next, the statute imposes two closely related requirements which go to the heart of the particular harm addressed through this record exclusion. An agency determining whether it can employ (c)(1) protection must consider whether it has "reason to believe" that the investigation's subject is not aware of its pendency and that, most fundamentally, the agency's disclosure of the very existence of the records in question "could reasonably be expected to interfere with enforcement proceedings."
>
> Obviously, where all investigatory subjects are already aware of an investigation's pendency, the "tip off" harm sought to be prevented through this record exclusion is not of concern.

U.S. Department of Justice, Office of Information and Privacy, Freedom of Information Act Guide & Privacy Act Overview at 222-223 (Sept. 1992) (emphases added).

Turning to Exemption 7(A) of FOIA, the application of this Exemption requires a two-step analysis focusing upon: (1) whether a law enforcement proceeding is pending or prospective; and (2) whether release of information about it could reasonably be expected to cause some articulable harm.

With regard to the first step of the Exemption 7(A) analysis, the legislative history as well as judicial interpretations of congressional intent make clear that Exemption 7(A) was not intended to "endlessly protect material simply because it [is] in an investigatory file." NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 232 (1978). Rather, Exemption 7(A) is temporal in nature and, as a general rule, may be invoked as long as the proceeding remains pending, or so long as the

proceeding is fairly regarded as prospective or as preventative.[6] See Seegull Mfg. Co. v. NLRB, 741 F.2d 882, 886-87 (6th Cir. 1984); Barney v. IRS, 618 F.2d 1268, 1273-74 (8th Cir. 1980) (once enforcement proceedings are "either concluded or abandoned, exemption 7(A) will no longer apply").

In our opinion, disclosure of timesheets in this case maintained by the Department or deputy attorneys general in connection with the SPJ's complaint at this time could not "reasonably be expected to interfere with enforcement proceedings," since: (1) the statute of limitations under section 92-11, Hawaii Revised Statutes, has run, and (2) the Department has confirmed that no enforcement proceeding is prospective or contemplated.

There may well be circumstances under which the disclosure of timesheets prepared by deputy attorneys general in connection with a civil or criminal law enforcement investigation could interfere with enforcement proceedings, by among other things, tipping off investigatory subjects (who are otherwise unaware of the pendency of such an investigation), of the existence of an investigation. However, the threat of such interference is not present based upon the facts in this case, especially where the subject of the investigation, the University, should have been aware of the existence of the SPJ's complaint. See Exhibit "C."

Based upon the foregoing authorities, it is our opinion that copies of timesheets prepared by deputy attorneys general as a result of the complaint filed by the SPJ dated October 29, 1992, are not records or information compiled for law enforcement purposes, "which must be confidential in order to avoid the frustration of a legitimate government function." Haw. Rev. Stat. § 92F-13(3) (Supp. 1992).

Additionally, because: (1) the disclosure of such timesheets, in our opinion, would not otherwise frustrate a legitimate government function, (2) such records are not specifically protected from disclosure by State or federal law, see section

[6]Exemption 7(A) of FOIA may also be invoked where: (1) an investigation, although in a dormant stage, "is nonetheless an 'active' one which will hopefully lead to a 'prospective law enforcement proceeding,'" see National Public Radio v. Bell, 412 F. Supp. 509, 514 (D.D.C. 1977), or (2) after an investigation is closed, the disclosure could be expected to interfere with a related, pending enforcement proceeding. New England Medical Ctr. Hosp. v. NLRB, 548 F.2d 377, 386 (1st Cir. 1976); Freedburg v. Dep't of the Navy, 581 F. Supp. 3, 4 (D.D.C. 1982).

92F-13(4), and (3) disclosure of the timesheets would not constitute a clearly unwarranted invasion of personal privacy, it is our opinion that these government records must be available for inspection and copying upon request by any person, after information describing the nature of the legal work performed has been segregated from the timesheets.

CONCLUSION

For the reasons set forth above, after information describing the specific nature of the work performed by a deputy attorney general has been segregated from timesheets related to the processing of the SPJ's complaint dated October 29, 1992, the OIP concludes that timesheets must be made available for inspection and copying upon request by any person, since we find that none of the exceptions in section 92F-13, Hawaii Revised Statutes, would authorize the Department to withhold access to the same.

If you should have any questions regarding this opinion, please contact me at 586-1400.

Very truly yours,

Moya T. Davenport Gray
Director

Hugh R. Jones
Staff Attorney

MTDG/HRJ:sc
Attachments

c: Jahan Byrne

Honorable Margery S. Bronster
Attorney General

Charleen M. Aina
Deputy Attorney General